

General Information Letter: No subtraction modification is allowed unless expressly provided in IITA Section 203 or if it would allow a double deduction.

May 15, 2006

Dear:

This is in response to your letter dated May 1, 2006 in which you request advice. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

We are the accountants for the above-mentioned taxpayer. This letter is in response to the BTR-76 for the taxpayer received for their December 31, 2005 1120-ST. The letter referenced the Self Employed Health Insurance was not an acceptable subtraction on 1120-ST part 1 line 5e. The department of revenue has assessed tax and penalties of \$577.19.

We have contacted the department of revenue and they have reiterated their belief that self employed health insurance was not an acceptable subtraction on part I line 5e. However, the department stated they were unsure as to where this subtraction should/could be taken. When we contacted the department of revenue we explained that the health insurance was not added to the greater than 5% shareholders W-2's and so it was taken as an M-1 subtraction on the Federal 1120-S. However if the amount had been added to the W-2 compensation then it would have been deductible on the IL 1120-St. Therefore, the deduction for self-employed health insurance was taken as an other subtraction to allow the deduction for state purposes. The department of revenue agreed that our logic made sense, but it was a legal issue. We have tried to contact legal for 2 weeks and every time have been given a busy signal. We are formally (sic) responding to the BTR-76 and forwarding a copy of this letter to your legal division to obtain a determination on where the health insurance subtraction should be taken.

The subtraction you claimed was properly disallowed. Illinois Income Tax Act (IITA) Section 203(h) (35 ILCS 5/203(h)) provides that no subtraction is allowed except those expressly provided in Section 203 and no such subtraction is allowed to corporations by section 203(b)(2).

Furthermore, IITA Section 203(g) prohibits double deductions, and the insurance premiums should have been deducted in computing the corporation's federal taxable income.

For taxable years beginning on or after January 1, 1991, the effective date of IRS Rev. Rul. 91-26, an S corporation must file Form W-2 for each more-than-2% S corporation shareholder-employee on whose behalf health and accident insurance premiums have been paid. The cost of these premiums is included in his or her wages. RIA (2006), par. S-3178. Since the date of the aforementioned Revenue Ruling, the amount of such expense has been deductible by the S corporation as an IRC Section 162 business expense in determining federal taxable income, which is the starting point for Illinois income tax. Illinois Income Tax Act 203(e)(2)(G). Because the cost of paying health and accident insurance premiums for more-than-2% shareholders is already reflected in the S corporation's federal taxable income, it may not be subtracted a second time at the Illinois level as an "other" subtraction at line 5e, Part I of the IL-1120-ST.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax